

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-006943

12/03/2002

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

MARICOPA COUNTY ANIMAL CARE AND
CONTROL

JODI R PREUDHOMME

v.

MARICOPA COUNTY EMPLOYEE MERIT
SYSTEM, et al.

DAVID M PARK

STERLING SMITH
3137 N 25TH DRIVE
PHOENIX AZ 85017
REMAND DESK CV-CCC
JANICE STRATTON-MARICOPA
COUNTY EMPLOYEE
MERIT SYSTEM
201 W JEFFERSON, STE 240
PHOENIX AZ 85003

MINUTE ENTRY

Pursuant to A.R.S §12-910(e) this court may review administrative decisions in special actions and proceedings in which the State is a party:

The court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

The scope of review of an agency determination under administrative review places the burden upon the Petitioner to demonstrate that the hearing officer's decision was arbitrary,

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capricious, or involved an abuse of discretion.¹ This court may not substitute its own discretion for that exercised by the administrative agency,² but must only determine if there is any competent evidence to sustain the decision.³

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the administrative agency, exhibits made of record and the excellent memoranda submitted. After a careful review of the record, I find sufficient competent evidence to sustain the decision of the Maricopa County Employee Merit System Commission (the "Commission").

In the case at hand, an employee (Sterling Smith) of Maricopa County Animal Care and Control ("AC&C") was terminated for alleged violations including neglect of duty, insubordination, dishonesty, discourteous treatment of the public and/or fellow employees, and violation of the County's policies and code of ethics. These charges stemmed from an incident in which Smith accepted two Chihuahuas at the Animal Control facility, to take as his own, rather than process the animals through AC&C. An altercation ensued between Smith and AC&C's Director of Operations, when the Director saw Smith standing behind the facility, during work hours, with the two dogs.

The principle issue is whether the Commission acted arbitrarily, illegally, capriciously, or abused its discretion in finding that the AC&C's dismissal of the employee was shocking to the conscience, and that the Smith's actions did not amount to theft, dishonesty or insubordination. Only where the administrative decision is unsupported by competent evidence may the reviewing court set it aside as being arbitrary and capricious.⁴ In determining whether an administrative agency has abused its discretion, I review the record to determine whether there has been "unreasoning action, without consideration and in disregard for facts and circumstances; where there is room for two opinions, the action is not arbitrary or capricious if exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached."⁵

After a careful review of the record, this court finds that the Commission's determination was not contrary to law, nor was it arbitrary, capricious, or an abuse of discretion. The Commission listened to all of the evidence regarding Smith's alleged disregard for established policies and procedures, his dishonesty in attempting to steal the animals, his unethical actions,

¹ *Sundown Imports, Inc. v. Ariz. Dept. of Transp.*, 115 Ariz. 428, 431, 565 P.2d 1289, 1292 (App. 1977);

Klomp v. Ariz. Dept. of Economic Security, 125 Ariz. 556, 611 P.2d 560 (App. 1980).

² *Ariz. Dept. of Economic Security v. Lidback*, 26 Ariz. App. 143, 145, 546 P.2d 1152, 1154 (1976).

³ *Schade v. Arizona State Retirement System*, 109 Ariz. 396, 398, 510 P.2d 42, 44 (1973); *Welsh v. Arizona State Board of Accountancy*, 14 Ariz. App. 432, 484 P.2d 201 (1971).

⁴ *City of Tucson v. Mills*, 114 Ariz. 107, 559 P.2d 663 (App. 1976).

⁵ *Tucson Public Schools, District No. 1 of Pima County v. Green*, 17 Ariz. App. 91, 94, 495 P.2d 861, 864 (1972), as cited by *Petras v. Arizona State Liquor Board*, 129 Ariz. 449, 452, 631 P.2d 1107, 1110 (App. 1981);

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and his insubordination and discourteous conduct toward the Director. Subsequently, the Commission found that the evidence only supported a finding that Smith violated AC&C policies when he accepted the dogs in his personal capacity. The Commission properly found that such a violation alone does not warrant termination, and that the AC&C's decision to terminate the employee was shocking to one's sense of fairness.⁶ The decision by the Commission to reinstate the employee was neither contrary to law, arbitrary, capricious, or an abuse of discretion.

IT IS THEREFORE ORDERED affirming the decision of the Maricopa County Employee Merit System Commission.

⁶ See Pima County v. Pima County Merit System Commission, 189 Ariz. 566, 944 P.2d 508 (App. 1997); Poll v. Board of Education of Union Free School District No. 1, 313 N.E.2d 321 (N.Y. 1974).